

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SOMMERY LOT 2 LP,

Plaintiff,

v.

SOMMERY ROUND ROCK TX, LLC,

Defendant.

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1:23-CV-1442-RP

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Dustin Howell concerning Defendant Sommary Round Rock TX, LLC’s (“Sommary Round Rock”) Motion to Transfer Pursuant To The First-to-File Rule Or, Alternatively, To Dismiss Pursuant To Federal Rule of Civil Procedure 12(b)(6), (Dkt. 6). (R. & R., Dkt. 38). Plaintiff Sommary Lot 2 LP (“Sommary Lot”) timely filed objections to the report and recommendation, (Objs., Dkt. 39), and a motion to stay, (Dkt. 41). The parties engaged in responsive briefing regarding the objections, (Dkts. 45, 46), and the motion to stay, (Dkts. 42, 43).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Sommary Lot timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Sommary Lot’s objections and adopts the report and recommendation as its own order. Because the Court adopts the report and recommendation and transfers the case to the United States District Court for the Eastern District of New York, the

Court declines to rule on Sommary Lot's motion to stay. (Dkt. 41). Further, Sommary Lot previously requested a stay on the same basis in its response to Sommary Round Rock's motion to transfer, (Dkt. 7, at 14), and Magistrate Judge Howell rejected Sommary Lot's argument in the report and recommendation, (*see* R. & R., Dkt. 38, at 10–11). The Court agrees with the reasoning in the report and recommendation and declines to consider the motion to stay for the same reasons given in the report and recommendation.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Dustin Howell, (Dkt. 38), is **ADOPTED**.

**IT IS FURTHER ORDERED** that Defendant Sommary Round Rock's Motion to Transfer Pursuant To The First-to-File Rule Or, Alternatively, To Dismiss Pursuant To Federal Rule of Civil Procedure 12(b)(6), (Dkt. 6), is **GRANTED IN PART** as to the motion to transfer.

**IT IS FURTHER ORDERED** that this action is **TRANSFERRED** pursuant to the first-to-file rule to the United States District Court for the Eastern District of New York so that it may be consolidated with Civil Action No. 2:23-cv-8522-NRM-LGD.

**SIGNED** on June 25, 2024.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE